HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application no. 391 of 2005

Inder Singh
S/o Shri Laxman Singh
R/o Haripura Harsan
P.S. Bajpur
District U. S. Nagar .....Applicant

Versus

1. State of Uttaranchal
2. Ranjeet Singh
   Constable
   P.S. Haldwani
   District Nainital .....Respondents

Dated:- 29th July, 2005

Hon'ble J. C. S. Rawat, J.

Heard Sri Lalit Sharma learned Counsel for the applicant and learned A.G.A.

The petition under section 482 Cr.P.C. was filed for quashing the order dated 26.5.2005 passed by District & Sessions Judge, Nainital in Criminal Revision No.Nil/2005 Inder Singh Vs. State and order dated 16.5.2005 passed by Judicial Magistrate, Haldwani, District Nainital in Vehicle Release Application No.41/2005 State Vs. Inder Singh under section 60/72 of Excise Act.

Perusal of the record reveals that on 10.5.2005 the respondent No.2 lodged an FIR under section 60/72 of Excise Act against the applicant alleging therein that on 10.5.2005 when he was on patrolling with Manoj Kumar, they got information that one person is coming from Pipal Parav in a motorcycle with liquor. On the basis of which, they went towards Pipal Parav alongwith the informant. Thereafter, a motorcycle Hero Honda C.D. DWAN No.UA06 0738 came from Pipal Parav and they tried to stop the motorcycle. But, the applicant ran away towards the forest leaving the alleged motorcycle

in the road. They checked the motorcycle and found two canes of liquor. Thereafter, the case was registered against the applicant vide case crime No.5075/2005 under section 60/72 of Excise Act. Thereafter on 16.5.2005 an application has been filed before the Judicial Magistrate, Haldwani by the applicant with the prayer to release the alleged vehicle and the J.M., Haldwani rejected the same on the ground that the Excise Department has moved an application to the District Magistrate for forfeiture of the alleged Vehicle. Feeling aggrieved, the applicant preferred a revision before the Sessions Judge and the Sessions Judge has also rejected the revision.

Inspite of service the respondent No.2 has not turn up before this Court. It is not on record that the alleged motorcycle has been confiscated by the District Magistrate. It can only be held that the proceedings of the forfeiture may be pending before the Court. The learned counsel for the applicant has referred the decision of Allahabad High Court in **Sri Nand Vs. State of U.P. ACC 1997(1) p/320.** It is well settled position of law that if the property in question has not been confiscated the provisions of Cr.P.C. will be made applicable and the property can be released. However, the property can only be released in favour of the applicant if he shows that he is the registered owner of the alleged vehicle and he has also paid all the taxes and the said vehicle has a valid insurance certificate.

I am fortified with the law laid down by the Allahabad High Court in **Ram Suresh Rai Vs. State of U.P. ACC 1996(33)** and **M/s Laxmi Filling Station & another Vs. Indian Oil Corporation & others W.P. No.26001/2003.**

In view of the above, the orders dated 26.5.2005 passed by District & Sessions Judge, Nainital in Criminal Revision No.Nil/2005 Inder Singh Vs. State and dated 16.5.2005 passed by Judicial Magistrate, Haldwani, District Nainital in Vehicle Release Application No.41/2005 State Vs. Inder Singh under Section 60/72 of Excise Act are quashed. The matter is remitted back to the Magistrate concerned with the direction to dispose of the case in accordance with law.

The petition is disposed of accordingly.

(J. C. S. Rawat, J.)

Dated 29.7.2005

LSR